



Global Infrastructure Anti-Corruption Centre

GIACC



**TRANSPARENCY
INTERNATIONAL
(UK)**

- PACS -

Project Anti-Corruption System

(Construction Projects)

Template 2

Anti-Corruption Agreement

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- PACS -

TEMPLATE 2

ANTI-CORRUPTION AGREEMENT

[Note1: This agreement has been designed for large projects. A simplified version may be used for smaller projects]

[Note 2: This Agreement assumes that PACS Standard 1 (Independent Assessment) applies to the Project]

THIS AGREEMENT is made on..... [insert date] between:

(1)
.....
[insert name and address] ("Project Owner")

(2) [insert
name and address] ("Company")

IT IS AGREED AS FOLLOWS:

Definitions

"Claim" means any claim, set-off or counterclaim in relation to the Project including, without limitation, any application or claim for payment, variation, extension of time, damages, delay and disruption, prolongation or defects.

"Corruption" means bribery, extortion, fraud, deception, collusion, cartels, abuse of power, embezzlement, trading in influence, money-laundering, or any similar activity in relation to the Project.

"Independent Assessor" means the party appointed as Independent Assessor by the Project Owner to monitor the Project for Corruption.

"Independent Assessor Agreement" means the agreement appointing the Independent Assessor.

"Project" means [enter name of project].

Commitments by both parties

1. Corruption: Each party declares and undertakes that in relation to the Project:
 - (1) It has acted, and will continue to act, at all times honestly and fairly.
 - (2) It has not acted, and will not act, dishonestly so as to cause loss to any party or to deprive any party of its rights.
 - (3) It has not offered or given, and will not offer or give, directly or indirectly, any bribe or other improper benefit or advantage to any individual or organisation.

- (4) It has not demanded or accepted, and will not demand or accept, directly or indirectly, any bribe or other improper benefit or advantage for itself or any individual or organisation.
- (5) Save as permitted under the party's gifts and hospitality policy, if any:
 - (a) it has not made, and will not make, directly or indirectly, any payment except to the extent that such payment is legitimate compensation for legitimate services;
 - (b) it has not received, and will not receive, directly or indirectly, any payment except to the extent that such payment is legitimate compensation for legitimate services.
- (6) It has not provided to any party, and will not provide to any party, any written or oral information which it knows to be false, inaccurate or misleading, or where it is wilfully blind or reckless as to whether the information is false, inaccurate or misleading.
- (7) It has not dishonestly withheld from any party, and will not dishonestly withhold from any party, any written or oral information.
- (8) It has not authorised or acquiesced in or turned a blind eye to, and will not authorise or acquiesce in or turn a blind eye to, any Corruption.

2. Claims: Each party declares and undertakes as follows in relation to the Project:

- (1) It is aware that deliberately or recklessly making a false or inaccurate Claim, or using fabricated or falsified evidence in support of or to counter a Claim, or dishonestly delaying or withholding any payments which are due, may constitute a criminal offence.
- (2) If it is making a Claim:
 - (a) It will submit a Claim only where it honestly believes that:
 - (i) the Claim is true,
 - (ii) the Claim can be reasonably substantiated by accurate written or oral evidence, and
 - (iii) it has a bona fide legal or contractual entitlement to the matters claimed.
 - (b) The quantum of the Claim will be accurately calculated in accordance with the relevant contract requirements or, in the absence of contract requirements, on a reasonable price basis.
 - (c) The amount claimed will not be artificially marked up to include a negotiating margin or other illicit gain.
 - (d) Evidence contrary to the Claim will be disclosed to the recipient of the Claim and to the dispute resolution tribunal together with evidence in favour of the Claim.
- (3) If it is the recipient of a Claim:
 - (a) It will review the Claim using fair and transparent criteria.
 - (b) It will not dishonestly challenge or disregard a Claim.
 - (c) It will promptly pay any sums, award any extensions of time, issue any certificates or take other steps, which it honestly believes are due in relation to the Claim.
 - (d) It will promptly provide full reasons in relation to any items of the Claim which it refuses to accept and will rely only on those reasons which it honestly believes to be true and which can be reasonably substantiated by accurate written or oral evidence.

3. Anti-corruption obligations: Each party undertakes to comply with the following anti-corruption obligations:

[List here any specific anti-corruption obligations which apply to the project which are not already contained in this agreement.]

4. Compliance: Each party will ensure that:

- (1) its officers, employees and subsidiary companies comply with the party's commitments in this Agreement;
- (2) other organisations with which it contracts in connection with the Project (including joint venture partners, contractors, consultants, sub-contractors, suppliers, and agents) provide written commitments to that party which are equivalent to those provided by that party in this Agreement. Each party will take reasonable steps to enforce these commitments.

Commitments by the Company

5. The Company declares and undertakes as follows in relation to the Project:
- (1) **Procurement process**: It has not collaborated with, and will not collaborate with, any organisation with which it is competing during any procurement process.
 - (2) **Procurement services**: If the Company is providing advice to the Project Owner in relation to any procurement process:
 - (a) it will not deliberately, knowingly, with wilful blindness, or recklessly, recommend or approve any process which will provide an improper benefit or advantage to any individual or organisation;
 - (b) it will act impartially in making recommendations or decisions in relation to:
 - (i) pre-qualification submissions or tenders;
 - (ii) the selection of any party to tender for, be nominated for, or win any Project contract.
 - (3) **Design services**: If the Company is providing design services to the Project Owner, it will not deliberately, knowingly, with wilful blindness, or recklessly, provide or approve a design or any design variation:
 - (a) which is in excess of the requirements of the Project (unless this is disclosed to the Project Owner); or
 - (b) which will provide an improper benefit or advantage to any individual or organisation.
 - (4) **Certification services**: If the Company is providing services to the Project Owner in relation to certification of work done and/or certification or rejection of Claims, it will act impartially in making recommendations or decisions, including in relation to variations, extensions of time, defects, quality of works, payment, the validity of Claims, and the performance of any Project contractor, consultant or supplier.
 - (5) **Execution**: It will not, deliberately, knowingly, with wilful blindness, or recklessly, carry out, instruct, authorise, condone, or be party to any of the following:
 - (a) the provision of work, materials, equipment, or services which are not of the quality and quantity required under the relevant Project contract;
 - (b) the concealment of defective work, material, equipment or services.

Remedies and penalties for Corruption

6. The following remedies and penalties will apply in the event of Corruption by either party.
- (1) **Criminal penalties**. Under the Independent Assessor Agreement, if the Independent Assessor believes there is evidence of Corruption, he has a duty to make appropriate reports to the relevant criminal authorities. Corruption may result in criminal liability for both organisations and individuals.
 - (2) **Professional penalties**. Under the Independent Assessor Agreement, if the Independent Assessor believes there is evidence of Corruption by an individual, he has a duty to make appropriate reports to the relevant professional association where that individual is a member of such an association. Penalties may be imposed as a result by the professional association.
 - (3) **Employment penalties**. If an officer or employee of either party to this agreement is involved in any Corruption, then such party will remove that person from the Project and take appropriate disciplinary action against the officer or employee.
 - (4) **Disqualification and termination**. Where Corruption by the Company has facilitated or is intended to facilitate the award of a Project contract by the Project Owner to the Company, then:
 - (a) if the Project contract has not been awarded to the Company, the Project Owner will disqualify the Company from all participation in the Project, or

- (b) if a Project contract has already been entered into with the Company, the Project Owner will have the right to terminate that contract.
- (5) Withdrawal. If there has been Corruption in a pre-qualification, tender or nomination process in relation to the Project, and the Company was involved in that process but was not involved in the Corruption, then the Company will have the right to withdraw from the relevant process without liability to the Project Owner. If the Company withdraws, the Project Owner will return the Company's bond or other payment security.
- (6) Financial remedy. Where Corruption by either party has caused loss to the other, then the injured party will be entitled to recover from the guilty party an amount equivalent to the amount lost by the injured party as a result of the Corruption.
- (7) Other. The remedies and penalties provided for above will be without prejudice to any remedies and penalties that are available under any other contract between the parties or under any applicable law.

Penalties for breach of this agreement

- 7. If any party is in breach of this agreement, then the Independent Assessor will service a notice of breach on that party within [seven days] of his becoming aware of the breach and the following penalties will apply:
 - (1) Where the failure cannot be remedied, the party in breach will pay a fine of [state amount] to[state name of registered charity selected by Project Owner and with which the Project Owner has no connection] within [seven days] of receipt of a notice of breach from the Independent Assessor.
 - (2) Where the failure can be remedied, the party in breach will pay a daily fine of [state amount] to[state name of registered charity selected by Project Owner and with which the Project Owner has no connection] from time of receipt of a notice of breach from the Independent Assessor until the Independent Assessor has confirmed that the failure is remedied. The Independent Assessor will make such confirmation as soon as reasonably possible after he is satisfied that the breach is remedied.
 - (3) An application may be made to the relevant judicial authority for specific performance of the obligation.
 - (4) Where a breach is also an act of Corruption, then the remedies and penalties under clause 6 will also apply.

(See PACS Template 3 for Notices of Breach)

Duration of Agreement

- 8. This Agreement comes into force as soon as it has been signed by both parties. It cannot be terminated or varied except by the written agreement of both parties.

Precedence of this Agreement

- 9. Where there is any conflict between this Agreement and any other agreement between the parties, the terms of this Agreement will prevail.

Governing Law and Dispute Resolution

- 10. This agreement is governed by law [insert governing law].
- 11. Any dispute between the parties in relation to or arising out of this Agreement will be submitted to arbitration. The arbitration will be held in [insert location] under a single arbitrator appointed by the President for the time being of [insert name of institution]. The arbitration will be governed by the Arbitration Rules of [insert name of rules]. The language of the arbitration will be [insert language].

Signed by:

on behalf of (Project Owner)
(See Notes below)

Date:

Signed by:

on behalf of (Company)
(See Notes below)

Date:

Notes:

- (1) If either party is an unincorporated joint venture, each joint venture partner must sign this agreement.
- (2) If either party is a joint venture company, then each shareholder of that company must sign the following "Commitment by shareholders" which will form part of this Agreement.

Commitment by shareholders of the Project Owner

Each of the undersigned shareholders commits, as a party to the Anti-Corruption Agreement, that:

- (1) It will take reasonable steps to ensure that the Project Owner complies with its obligations under this Agreement.
- (2) It will comply with the provisions of this Agreement as if the reference to "Project Owner" was to that shareholder.

Signed by:

on behalf of [shareholder]

Date:

etc. [There should be a separate signature clause for each shareholder..]

Commitment by shareholders of the Company:

Each of the undersigned shareholders commits, as a party to the Anti-Corruption Agreement, that:

- (1) It will take reasonable steps to ensure that the Company complies with its obligations under this Agreement.
- (2) It will comply with the provisions of this Agreement as if the reference to "Company" was to that shareholder.

Signed by:

on behalf of [shareholder]

Date:

etc. [There should be a separate signature clause for each shareholder..]